

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TENNESSEE  
AT KNOXVILLE

SCOTT PHILLIPS, DERITA PHILLIPS, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	No. 3:04-CV-219
	)	(JORDAN/GUYTON)
PACIFIC MARKET, INC., and WAL-MART	)	
STORES EAST, L.P. and/or WAL-MART	)	
STORES, INC.,	)	
	)	
Defendants.	)	

**MEMORANDUM AND ORDER**

The parties, after receipt of the Court's Memorandum and Order [Doc. 28] on the testing of two thermos bottles involved in this case, advised the Court that while awaiting the Court's ruling they had worked out a procedure satisfactory to both sides to accomplish their respective testing needs. Accordingly, the Court hereby supplants its earlier Memorandum and Order [Doc. 28] with this Order, the original Motion [Doc. 23] is **DENIED AS MOOT**, and the parties are Ordered as follows, pursuant to their agreement: (1) allow physical inspection, measuring, and weighing by defendants' expert from R.J. Lee Group on or about May 3, 2005 in Oak Ridge, and (2) upon completion of that examination, plaintiffs' experts will be free to do whatever examination including cutting and other partial destructive testing of the thermos metal in order to evaluate the failure. Plaintiffs will first provide defendants with the basic protocol or approach for their proposed testing. Finally, (3) plaintiffs and defendants each agree to provide the other side with a copy of any report of their examination and testing, including photographs, and

plaintiffs will make any metal samples taken from said thermos available to be examined by the defendants' experts, if they so desire.

**IT IS SO ORDERED.**

**ENTER:**

s/ H. Bruce Guyton  
United States Magistrate Judge